Croatia

Contributor: Dr. Ivana Kunda

a) Legislative Framework

The Croatian legislation in force has been aligned with the International and European instruments in the field of patent law.[25] As such, it seems rather satisfactory in terms of establishing an efficient patent system to the extent that the European patent system is so efficient. No problems of general nature have been reported by experts or academics in the laws themselves. It seems that overall under-discussion of topics on patent law in Croatian academic and expert papers is perhaps due to the relatively small number of patents (resulting from the relatively small number of innovations being created because of the unfavourable economic circumstances) and this tends to create a vicious circle.

The laws address specific issues such as biotechnology, employee inventions, technology transfer and patents arising from government-funded research. As for biotechnology, the Croatian laws are consistent with the European ones. The specific research was conducted in the field of human embryonic stem cells and it shows that there were no such applications or patents before the SIPO.[26] In any case, it seems that such a patent would not be granted anyhow since the informal information received from the SIPO in 2008 was that human embryonic stem cells would not be patentable if resulting from the process in which an embryo is destroyed. Such position is in line with the later judgment of the EU Court of Justice.[27] Aside from the embryonic stem cells, the search through the online database results in 1 submitted application and 5 granted patents relating to other types of human stem cells.[28] The mentioned application (No. P20050265A) was submitted through the PCT, while the mentioned patents (Nos. P20130668, P20130765, P20130812, P20120887 and P20131104) came to Croatia through the EPO. There is one patent for animal embryonic stem cells (No. P20131203). There are other patents related to biotechnological inventions and there are all-together approximately 70 such

[25] The main legal source, in addition to the international conventions (see http://www.dziv.hr/hr/zakonodavstvo/medjunarodni-ugovori/), is the Patent Act (Official Gazette of the Republic of Croatia, Nos. 173/2003, 87/2005, 76/2007, 30/2009, 128/2010, 49/2011 and 76/2013) See. http://www.dziv.hr/hr/zakonodavstvo/nacionalno-zakonodavstvo/patent/

[26] See Mutabžija, Jasmina, Patentibilnost izuma koji se odnose na ljudske embrionalne matične stanice i kloniranje prema Europskoj patentnoj konvenciji (doktorska disertacija), Pravni fakultet Sveučilišta u Zagrebu, 2014, especially chapter 7.2. See also Mutabžija, Jasmina/Kunda, Ivana, Legal Limitations on Genetic Research and the Commercialisation of its Results, Journal of International Biotechnology Law, Vol. 4, No. 1, 2007, pp. 21-35.

[27] C-34/10, *Oliver Brüstle v Greenpeace eV*, 18.10.2011.

[28] The database does not enable the search by terms in the documents, so the search was limited to the title of the patent.

applications/patents based on the search using the term "cell". None of them was submitted through the SIPO, but through either the PCT or the EPO.

The example of biotechnological patents reveals certain characteristics and tendencies in the Croatian patent system. As already said, the latter is fully aligned with the European laws. Statistical data show some trends. In the period of 1.1 2014- 31.1 2014, 17 patents were granted, out of which 11 by resident and 6 by non-resident applicants. In total, from 1.1.1992 to 31. 1. 2014 there have been 16.010 patents granted, out of which 4.288 patents are in validity at the latter date (230 by resident and 4.058 by non-resident applicants) and 404 consensual patents (346 by resident and 58 by non-resident applicants).[29]

There is a decrease in the national applications over the years especially since 2008 when Croatia became a member of the EPO. The following table shows the relevant figures which are made public by the SIPO.[30]

Year	Number of patent applications
1992-1997	5967
1998-2000	cca 1956
2001	973
2002	1037
2003	1101
2004	1239
2005	1028
2006	443
2007	437
2008	400
2009	318
2010	278
2011	251
2012	249
2013	?

Table 1. Number of patent applications

In turn, there is an increase in the total number of patents due to joining the European patent system.

Regarding employee inventions, academic research shows that the overall system is adequately representing the involved interests, but there seem to be certain inadequacies in

[29] See http://www.dziv.hr/hr/o-zavodu/statistika-ind-vlasnistva/

[30] See annual reports available at http://www.dziv.hr/hr/o-zavodu/godisnje-izvjesce/arhiva-g-i/

the existing legislative scheme, particularly in terms of inventions created "at work or in relation to the work" as defined in the Labour Act. The inadequacies are due to the under-regulation of this issue, i.e. lack of more precise criteria which would remove the uncertainty as to when the rights to an invention belong to employer and when to employees. Another problematic point is the lack of any criteria in establishing the compensation which is due to an employee who created an invention at work or in relation to the work. This is proven to be the source of dispute between employers and employees-inventors.[31]

The transfer of technology has been related to the transfer of the private sector of the intellectual property created at universities.[32] Therefore, transfer of technology is addressed here together with the patents arising out of government-funded research. It is important to mention that the strategic documents constantly stress the importance of correlation between government-funded research and the needs of the private sector. Thus, the Ministry of Science, Education and Sports Strategic Plan for 2014-2016 contains the first of many scientific goals: to stimulate stronger connection between scientific potential of the public scientific institutes and higher education institutions and economic and social sector as a whole.[33] The research of this area revels that there is a certain level of under-regulation, as the laws regulate these matters only as parts of general provisions on co-creators, employee inventions or alike. Therefore, there seems to be the need for additional regulatory framework, which is in the recent years mostly being created at the university levels.[34]

The Institutional and legal structure formed within the University of Rijeka may serve as an example. The Technology Transfer Office of the University of Rijeka was established in 2009 as well as other bodies involved in the process of evaluation, protection and commercialisation of the intellectual property created at the University. The Scientific and Technology Park – STeP Ri, was also established. Among the legal sources, the most important are the Strategy of the University of Rijeka, the Regulations on Managing the

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[31] Matanovac Vučković, Romana/Kunda, Ivana, Materijalnopravno i kolizijskopravno uređenje intelektualnog vlasništva nastalog u radnom odnosu, Zbornik Pravnog fakulteta Sveučilišta u Rijeci, Vol. 32, No. 1, 2011., pp. 75-122, especially p. 89.

[32] Kuterovac, Ljiljana, Intelektualno vlasništvo i znanstvenoistraživačke institucije, u: Hrvatsko pravo intelektualnog vlasništva u svjetlu pristupa europskoj uniji, Narodne novine, Zagreb, 2006; Matanovac Vučković, Romana, Transfer tehnologije sa sveučilišta u gospodarstvo – hrvatska iskustva, u: Blašković, Božin (ur.), Pravne i infrastrukturne osnove za razvoj ekonomije zasnovane na znanju, Univerzitet u Kragujevcu Pravni fakultet, Kragujevac, 2012, pp. 195-216; Barbić, Jakša (ed.), Intelektualno vlasništvo i sveučilište: okrugli stol održan 23. svibnja 2013. u palači Akademije u Zagrebu, Hrvatska akademija znanosti i umjetnosti, Zagreb, 2013.

[33] See http://public.mzos.hr/Default.aspx?art=10679&sec=1933

[34] See data and documents for the University of Rijeka at the official web page http://www.uniri.hr/index.php?option=com_content&view=category&layout=blog&id=81&Itemid=166&lang=hr; for the University of Split at the official web page http://www.utt.unist.hr/hr/; for the University of Zagreb at the official web page http://technology.unizg.hr/

Intellectual Property at the University of Rijeka, the Policy of Managing the Intellectual Property at the University of Rijeka and Innovation Strategy adopted by the University Senate at the end of 2012. In 2012, there were around 20 projects in different stages in the process of evaluation, protection and commercialisation of intellectual property, and by 2012 more than 20 prototypes were made. There are no applications/patents of the University of Rijeka in Croatia, but there are three patent applications (Nos. WO2011098843, WO2011036505 and WO2010041090) of the University of Zagreb and one patent application (No. WO2009016421) of the University of Dubrovnik, all being submitted through the PCT system. Additionally, there is one consensual patent (No. HRP20100404) of the University of Zagreb.[35]

The Institute Ruđer Bošković is a good example of the government-funded research, which is transferred to the private sector. The search also showed that there are 19 applications/patents by the Institute Ruđer Bošković.[36] They regularly patent their innovations and constantly offer patented inventions for commercialisation. Together with the company Ruđer Innovations they have established five spin-off companies.[37]

b) Governmental aspect

The National Intellectual Property Strategy of the Republic of Croatia for the period of 2010-2012[38] specifically addressed patents in several respects. Guidelines 5 and 6 within the Strategic goal of improvement of the Institutional Framework mention patents. Guideline 6 titled ''Strengthening of the SIPO information function" explains that such a goal is in line with the development of the European patent system, in particular with the European Patent Network.[39] Additionally, Guideline 5 titled ''Optimisation of Procedures for Recognition of Intellectual Property Rights'' states that "SIPO shall ensure that the procedure for recognition of intellectual property rights is of good quality, reliable, fast and acceptable in terms of costs. With this aim it shall follow the best practices of the national offices in determining the contents, volume and structure of specialised tasks to be fully carried out within the SIPO using its own resources, in relation to the contents and volume of using the results based on expertise performed in the centres of excellence within the international intellectual property system." This is identified as particularly important in the

[35] Search was done on 17 February 2014 at the http://hr.espacenet.com/?locale=hr_HR using the keyword for applicant/holder „sveuciliste".
[36] Search was done on 17 February 2014 at the http://hr.espacenet.com/?locale=hr_HR using the keywords for applicant/holder „ruder, boskovic".
[37] See http://www.irb.hr/Gospodarstvo/Ponuda-intelektualnog-vlasnistva and http://www.irb.hr/Gospodarstvo/Spin-off-drustva
[38] The revised National IP Strategy was adopted by the Croatian Government on 1 April 2010. See Nacionalna strategija razvoja sustava intelektualnog vlasništva Republike Hrvatske za razdoblje 2010-2012, accessible at http://www.dziv.hr/files/File/strategija/Strategija_IV_2010_12.pdf
[39] Ibid. p. 16.

field of patents, as certain examinations might require outsourcing where the world best centres would be asked for assistance, while the SIPO would retain its examiners only in selected areas of technology. The shift towards outsourcing is explained by the quantity and structure of potential patent applications and engagement of patent experts in realisation of other strategy goals.[40] To a certain extent this answers the question on the level of expertise, at least in relation to such technologies which require significant resources. There is another indication that the sector for patents is under-capacitated when it comes to experts performing substantive examination: The action plan for 2014 states that the goal is to achieve 44% of applications being dealt within the deadline, while the desired effectiveness of formal examination or other types of legal procedures is 90% or 95%.[41]

Regarding the remedies against the granted patents there is a scheme already in place, which involves the proceedings to declare the patent null and void. This is regulated under the Title IX. Declaring the Patent Null and Void. The proceedings to declare the invalidity of patents are administrative in nature and have to be brought before the SIPO in the first-instance, and the Boards of Appeal in the second instance. There is also a judicial review before the competent administrative courts. In addition to any natural and legal person, the State Attorney is also entitled to submit such a claim. The grounds for declaring the patent null and void are: a subject matter which cannot be patented or is excluded from patentability, or relates to the invention which, at the time the application was submitted, was not new or did not reach the level of inventive step, or was not industrially applicable, which was not sufficiently disclosed, or where the content of the patent exceeds the content of the patent application itself, or is granted to the person who was not entitled to claim patent protection. Likewise, there are similar proceedings for declaring the supplementary protection certificate null and void.

c) Enforcement

According to the most recent official statistical report available, at the beginning of 2009 there was a total number of 945 lawsuits for intellectual property infringement pending before the Croatian Commercial Courts (first-instance courts), out of which 759 are related to enforcement of copyright in the regime of collective management and 113 to individual enforcement of copyright, 41 to enforcement of trademarks, 12 to enforcement of patents, 11 to enforcement of industrial design, and 9 to enforcement of geographical indications. There were 235 appeal cases received in 2009 by the High Commercial Court, which were added to 411 appeal cases already pending before the High Commercial Court that year.[42]

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[40] Ibid. pp. 15.-16.

[41] Godišnji plan rada Državnog zavoda za intelektualno vlasništvo za 2014. godinu, accessible at http://www.dziv.hr/files/File/o-zavodu/plan_rada/Plan_rada_2014.pdf, pp.10-11.

[42] SIPO Statistical report on the infringements of intellectual property rights in Croatia: Annual report 2009 (Zagreb, March 2010), available at

Below is the table with figures based on the SIPO reports specifically addressing the enforcement of IP rights in Croatia.[43] The table shows the number of patent cases before the first-instance courts; unfortunately, such statistical data is not available from the High Commercial Court.

Year	Number of pending cases at the beginning of the monitored year	Number of cases submitted in the monitored year	Total number of decisions in the monitored year	Number of pending cases at the end of the monitored year
2009	12	2	5	9
2010	9	4	6	7
2011	7	5	2	10
2012	10	1	3	8

Table 2. Number of patent cases before the Commercial Courts

It is apparent that cases between 1 and 5 patents are submitted before the first-instance courts while those between 2 and 6 decisions are rendered annually. These figures show that patent disputes are quite rare, so any general conclusions might be proven invalid due to such a small number of cases. However, the rarity of patent cases may suggest that judges, quite justifiably, are not particularly experienced in the patent field regardless of the fact that there are selected judges at four Commercial Courts (Zagreb, Split, Rijeka and Osijek) who are indeed specialised for intellectual property cases (along with one or more other specialisations). Because of the small number of patent cases, they do not make a decision about them on regular basis. This is equally or even more true for the attorneys; there are only a few law offices in Croatia, or rather in Zagreb that are exclusive for IP matters.

The Arbitration Act[44] allows the non-contractual disputes to be submitted to arbitration and they would be considered arbitrable as long as none of the core patent issues arise (such as validity, existence and similar).[45] However, to the author's knowledge, there were no arbitration proceedings before the Permanent Arbitration Court of the Croatian Chamber of Commerce regarding patent infringement.

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http://www.dziv.hr/en/webcontent/file_library/inf_sources/pdf/izvjesce_povrede_IV_2009_ENG.pdf, p. 99.

[43] See the SIPO reports available at http://www.dziv.hr/hr/provedba-prava/statistika/

[44] Official Gazette of the Republic of Croatia, No. 88/2001.

[45] See Kunda, Ivana, Croatia, in: Kono, Toshiyuki (ed.) Intellectual Property and Private International Law, Hart Publ., 2012, pp. 477-424, especially p. 492 and 513.

However, there are efforts to use conciliation/mediation within the proceedings arising out of the infringement of an IP right, including patents. Satisfactory results were reported when the conciliation/mediation was first offered within the court proceedings, but there is no continuous statistical data to compare with.[46]

d) Competition issues

Based on the resources available by the Croatian Competition Agency, there do not seem to be any issues of competition law in cases of licensing the technology or patents.[47] There is one decision concerning the licensing agreement between EMI Music International Services Ltd. (UK), Dallas doo. (Slovenia) and Dallas d.o.o. (Croatia), but it does not concern patents. It may though be indicative of the standards that apply in this respect. In this case, the Croatian Competition Agency qualified the agreement in question, whereby Dallas d.o.o. (Croatia) was granted a license to distribute the sound and video recording media on the territory of Croatia, as an exclusive distribution agreement. The Agency held that the provision of Article 5.2 of that agreement[48] is restricting free competition (because the market is being divided territorially and on the basis of group of consumers) and is consequently null and void *ex lege*.[49]

e) Licensing

To the best of the author's knowledge, there has not been a single compulsory licence issued in Croatia since the dissolution of former Yugoslavia.

f) Other

As already explained, there is scarcity of research into the patent system in Croatia, be it legal, economic or social. Certain papers indeed suggested some changes but those are fragmented and concern specific areas as mentioned above. Although an EU Member State, Croatia is still not participating in the EU patent system and there are no signs from the

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[46] Blažević, Borislav, Mirenje u postupku zbog povrede prava intelektualnog vlasništva, u: Matanovac, Romana (ed.)., Prilagodba hrvatskog prava intelektualnog vlasništva Europskom pravu, Narodne novine, Zagreb, 2007, pp. 327-341, especially p. 333.

[47] See published decisions available at http://www.aztn.hr/rezultati-odluke-trzisno-natjecanje/?casenumber=&dateearlier=&datelater=&area=tn&text=&submit_odluke=

[48] The relevant part of the provision states that Dallas d.o.o. shall not supply sound and video recording media to no person outside the territory or person on the territory but for which the company knows or should reasonably assume that they will sell outside the territory the sound and video recording media supplied in this manner.

[49] Decree by the Croatian Competition Agency, klasa: UP/I 030-01/2001-01/60 of 8 April 2003, published in the Official Gazette of the Republic of Croatia, No. 154/2003.

Government which direction will be taken in that respect. For the time being there is a *status quo*.

Most probably, the biggest challenge for the Croatian patent system is the economic situation in the period following the dissolution of former Yugoslavia, and particularly the last five years when the economic crisis took its toll. It has affected the research and development in the private sector as well as the state-funded research as shown above.